

General Motors Corporation, Chevrolet Parma Division and Charles Hamrick. Case 8-CA-13779

May 14, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER

On June 17, 1981, Administrative Law Judge Leonard M. Wagman issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In adopting the Administrative Law Judge's findings, we find it unnecessary to pass on his reliance on *Midwest Precision Castings Company*, 244 NLRB 597 (1979).

² Chairman Van de Water concurs in the dismissal of the complaint, but regrets that Agency talent and scarce Board funds were wasted in the litigation of this previously settled matter. Thus, as set forth in the Administrative Law Judge's Decision, grievances were filed concerning the discharges which are the subject of this proceeding, and a settlement was concluded between Respondent and the Union. The settlement provided for the reinstatement without backpay of all three employees and the entry of 2 weeks' disciplinary layoffs on their personnel records. In the Chairman's view, formal processing through the Board's complaint and hearing of settled cases of this kind severely hampers the Board's ability to reduce its mounting backlog of unresolved matters.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge: This proceeding was heard before me at Cleveland,

Ohio, on December 15, 16, and 17, 1980,¹ pursuant to complaint issued on June 8. The complaint, issued by the Regional Director for Region 8, alleged in essence, that Respondent General Motors Corporation, Chevrolet Parma Division, violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*), herein called the Act, by discharging employees Charles Hamrick, Phillip Miles, and Joseph McAdams because they engaged in union activity. Respondent, by its timely answer, denied having committed the alleged unfair labor practices.

Upon consideration of the entire record, the demeanor of the witnesses as they testified, and the post-trial briefs received from the General Counsel and Respondent, I make the following:

FINDINGS AND CONCLUSIONS

I. THE RESPONDENT'S BUSINESS

From the pleadings, I find that Respondent is a Delaware corporation, whose main office is in Detroit, Michigan. Respondent also admits that its Parma, Ohio, plant, which is involved in this case, annually manufactures and ships directly to points outside of Ohio, automobile parts valued in excess of \$50,000. From these facts, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleged, the answer admitted, and I find that the Union, Local #1005, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED VIOLATIONS OF SECTION 8(A)(3) AND (1) OF THE ACT

A. Background Facts and Issues

At all times material to this case, the Union has been the recognized exclusive collective-bargaining representative of the 4,500 to 4,700 production and maintenance employees at Respondent's Parma, Ohio, Chevrolet plant. These same employees have at all times material to this case been covered by a national collective-bargaining agreement between General Motors Corporation and the Union's parent International, and by a local agreement between the Union and Respondent.

At the time of the unfair labor practices in this case, Charles Hamrick, Phillip Miles, and Joseph McAdams were classified as hourly employees at Respondent's Parma plant and were also elected union officials. They did not perform the production or maintenance work assigned to their respective classifications.

Hamrick was a shop committeeman. Miles and McAdams were district committeemen. Both positions were full-time jobs. Hamrick's responsibility included overseeing the activities of district committeeman, resolving grievances at the second step, and participating in the

¹ Unless otherwise stated, all dates refer to 1980.

third step of grievances and in local contract negotiations.

Shop committeeman Hamrick was a member of the Union's negotiating committee which submitted its demands to Respondent on or about August 3, 1979. He remained a member of that committee through the remainder of 1979 and until March 1980.

District committeemen Miles and McAdams each serviced a group of 150 to 200 employees. They represented their constituents at the first step of the grievance procedure, attempted to resolve disciplinary matters, and checked for safety and maintenance problems on behalf of the Union and the bargaining unit employees in their respective groups.

The setting of this case, Respondent's Parma plant, consists of three separate manufacturing facilities: press metal, engine, and prop shaft. Press metal and engine are located in the main building. The prop shaft facility is housed in a separate building located approximately one-half mile away.

Respondent affords committeemen more freedom of action than it allows to rank-and-file employees. Thus, shop committeemen and district committeemen in the course of their duties are free to travel between the two buildings and outside the Parma plant without challenge from Respondent's security personnel. In contrast, rank-and-file employees are carefully checked for passes if they travel between the two buildings or leave the Parma plant during their worktime. Further, unlike the committeemen who are free to fix their own half hour lunch and rest periods, the rank-and-file employees have lunch and rest periods designated by Respondent.

In March, Respondent discharged the three union committeemen for attempting to defraud it of wages. The complaint alleged, and the answer denied, that Respondent thereby discriminated against the three employees because of their union activity and thereby violated Section 8(a)(3) and (1) of the Act.

More specifically, the issues raised by these discharges are whether the discharges ran afoul of the Act because Respondent was motivated by hostility toward the union activity of one or more of the alleged discriminatees, or because imposition of the discharges represented a stricter enforcement of plant rules against the three employees only because they were union committeemen.

B. The Discharge

On Monday, March 3, shop committeeman Hamrick was scheduled to work on the Parma plant's second shift from 2:30 p.m. to 11 p.m. Unlike the rank-and-file employees, committeemen did not have assigned lunch periods. Thus, Hamrick, on that date, took his normal half hour lunch period at his discretion. Hamrick together with district committeeman Phillip Miles, left the plant in Hamrick's car at 7 p.m. and drove a short distance to Fonti's Lounge. When the two arrived, they found fellow employee Joseph McAdams, a union district committeeman on the second shift. Shortly thereafter, about 7:40 p.m., shop committeeman Kenneth Wiechec, who was scheduled for the same shift, arrived.

The four committeemen remained at the lounge until 10:30 or 10:40 p.m. At that time, committeemen Miles

and Hamrick departed for Respondent's plant in Hamrick's car. McAdams returned to the plant in his own car. Wiechec left Fonti's, but did not return to the plant that night. Upon their return to the plant, about 10:45 p.m., Hamrick, Miles, and McAdams resumed their duties. They finished their respective shifts, punched their timecards, and left the plant.

Prior to March 3, Dennis Puntel, a labor relations representative employed by Respondent at its Parma plant, had on several occasions experienced difficulty contacting shop committeeman Hamrick during the latter's shift.² On that date, Puntel told his superior, Labor Relations Supervisor William Marsh that he suspected that Hamrick was leaving the plant for extended periods. Marsh instructed Puntel to "find out more information about this."

Puntel immediately arranged for surveillance of Hamrick's automobile. On the evening of March 3, Puntel, labor relations representative Kenneth Schultz, and a plant security officer, lieutenant Roger Pearson, stationed themselves in their own vehicles in Respondent's parking lot, watching Hamrick's car. Thereafter, Puntel, Schultz, and Pearson followed Hamrick's car to Fonti's Lounge. They remained outside Fonti's until Hamrick and his companions departed. Puntel, Schultz, and Pearson observed the comings and goings of committeemen Hamrick, Miles, and Wiechec, as well as McAdams' departure from Fonti's Lounge. They also observed Hamrick, Miles, and McAdams as they returned to the plant.³

During the second shift on March 4, Labor Relations Supervisors Tom Barnes and William Marsh interviewed shop committeeman Wiechec regarding his absence from the plant during the previous day's second shift.⁴ After Wiechec listened to the allegations against him, he admitted that he had not returned to the plant on the previous evening and had not punched out his timecard. Wiechec denied that he intended to defraud Respondent. He also said that he had intended to reveal his unauthorized departure from the plant. Wiechec was not disciplined.

On that same day, at approximately 5 p.m., Barnes and Marsh interviewed committeeman Miles. Miles told Marsh and Barnes that earlier that day, he had told his

² The General Counsel urged me to reject Dennis Puntel's testimony because he could not provide the specific dates or other details regarding his difficulties in contacting Hamrick and was evasive. However, as Puntel impressed me as being a frank witness, who provided as much information as his poor memory would allow, I have credited his testimony.

³ My findings regarding the surveillance are based upon Puntel's and Pearson's testimony.

⁴ This interview as well as similar interviews accorded employees Hamrick, Miles, and McAdams were referred to in testimony as "76(a) interviews." This reference is to paragraph 76(a) of the collective-bargaining agreement between General Motors Corporation and the Union's parent, the UAW, which provides:

When a suspension, layoff or discharge of an employee is contemplated, the employee, where circumstances permit, will be offered an interview to allow him to answer the charges involved in the situation for which such discipline is being considered before he is required to leave the plant. An employee who, for the purpose of being interviewed concerning discipline, is called to the plant, or removed from his work to the foreman's desk or to an office, or called to an office, may, if he so desires, request the presence of his District Committeeman to represent him during such interview.

supervisor of the previous evening's extended absence. Barnes and Marsh spoke of his lengthy visit to Fonti's Lounge on the previous evening. Miles admitted being absent from the plant "for personal reasons." Marsh and Barnes concluded by warning Miles that he was subject to disciplinary action.

Later in the same shift, Marsh and Barnes interviewed committeeman McAdams. Marsh and Barnes confronted McAdams with their account of his activities on the previous evening. McAdams admitted that he had been absent from the plant on personal business. He asserted that prior to the interview he had advised his supervisor that his time for the previous shift should be reduced in light of his unauthorized 3-1/2-hour absence on Monday evening.⁵ Marsh and Barnes warned McAdams of possible disciplinary action.⁶

Respondent excused Hamrick from work on March 4, for union business. Hamrick did not work on March 5 and 6, because his wife and child were ill. On the afternoon of Wednesday, March 5, Hamrick telephoned labor relations representative John Laman at Respondent's plant. Hamrick stated his intention to be absent that day and Thursday. He expressed uncertainty about Friday giving as reason the illness of his wife and child. Hamrick also disclosed that he had overextended his lunch on Monday. Laman inquired as to what time Hamrick had returned from Fonti's. Hamrick answered "some time before 11:00."⁷

Soon after Hamrick returned to work on March 7, Labor Relations Supervisor Barnes notified him that Respondent suspected that he had violated shop rules and had committed "possible fraud." Hamrick accepted Barnes' offer of an interview. Later that same day, Labor Relations Supervisors Barnes and Marsh interviewed Hamrick, who stated that he was out of the plant for 3-1/2 hours on the evening of March 3, for "personal" reasons. When asked why he had not told his supervisor about his absence when he returned to the plant that evening, Hamrick responded that he had been in a hurry to get to the bathroom and then anxious to leave quickly because his child was ill. Barnes or Marsh discussed Hamrick's conduct in terms of the shop rules and fraud. Hamrick challenged management's fraud contentions by pointing out that he had reported his 3-1/2-hour absence to Labor Relations Representative Laman on March 5. Before the interview concluded, Respondent's representatives notified Hamrick that he was subject to discipline.⁸

On March 11, Miles and McAdams each received a discharge notice entitled "Report of Disciplinary Action," signed by Labor Relations Supervisor Marsh. Miles' discharge notice gave the following explanation:

⁵ McAdams was an acting shop committeeman on Monday, March 3. During that shift, Respondent's labor relations office, which supervised all shop committeemen, also supervised him.

⁶ My findings regarding the interviews of Wiechec, Miles, and McAdams are based upon Supervisor Barnes' testimony.

⁷ I based my findings regarding Hamrick's absences on March 4, 5, and 6, and his report to Laman upon Hamrick's testimony.

⁸ My findings regarding Hamrick's interview are based upon his and Supervisor Barnes' testimony.

You are being discharged for your fraudulent attempt to obtain pay for time on 3/3/80 when you were off the Company premises and not at work. You were observed leaving the plant at approximately 7:01 P.M. Later, at approximately 10:39 P.M., you were observed by three (3) members of Management as you exited the Fontis [sic] Lounge at 6365 Pearl Road. Thereafter, at approximately 10:45 P.M., you reentered the plant via the Old South entrance. You rang your time card out at 11:30 P.M.

McAdams' discharge notice gave a similar explanation of Respondent's action. On March 12, Hamrick received a discharge notice with an explanation couched in terms similar to the above-quoted language.

The three committeemen filed grievances concerning their discharges. Respondent and the Union concluded a settlement under which the three were reinstated without backpay and with a 2-week disciplinary layoff entered on their respective work records. Respondent reinstated the three committeemen on April 21. However, Respondent entered a 2-week disciplinary layoff on their records.

There is evidence of management hostility toward Hamrick. I find from Miles' undenied testimony that during the week of March 4, Marsh, in conversation, stated in substance that but for Hamrick's involvement, Miles and McAdams would have been charged only with violation of shop rule 11,⁹ and would have received only reprimands for their absences on March 3. At the end of April, Respondent's assistant personnel director, Don Durbin told McAdams, that had he not been involved with "a certain individual" on March 3, Respondent would not have discharged him, and that but for McAdams, Miles and Hamrick would not have been reinstated.¹⁰ I credit Miles' undenied testimony that early in May, Marsh again said that because of Hamrick, Miles' punishment had been severe.

Respondent's records and credited testimony¹¹ show application of shop rule 11 to incidents of unauthorized absences including instances where the offender did not punch out his timecard until the end of his shift. One of the latter incidents occurred on July 6, 1979. On that date, two supervisors observed Miles lunching at a pizzeria near the plant for 70 minutes, 40 minutes more than Respondent permits. That day, as on March 3, Miles returned to the plant, finished his shift, and then for the first time punched out. He did not report his excessive absence to his supervisor.

⁹ Shop rule 11 prohibits employees from leaving a department or plant without permission.

¹⁰ My findings regarding Durbin's remarks are based upon McAdams' testimony. Durbin's denial that he made these remarks was given with hesitation after he had testified that he did not remember. In contrast, McAdams gave his testimony in a full and forthright manner.

¹¹ According to Donald Hadsall, director of personnel services, Chevrolet Central office, if an employee leaves the plant without authorization and clocks out, shop rule 11 applies. If an employee leaves the plant without authorization and claims wages for the period of his unauthorized absence, he or she would be guilty of violating shop rule 11 and of fraud. However, Hadsall asserted that this latter misconduct "is all violative of shop rule #11." Assistant Personnel Director Durbin substantially corroborated Hadsall's testimony.

In its "Report of Disciplinary Action," Respondent found Miles guilty of violating shop rule 11, "Leaving own department or the plant during working hours without permission." In the same report, the statement of misconduct was as follows:

You are being given a disciplinary layoff of the balance of the shift plus one (1) day for the violation of shop rule 11 as noted above. You were observed by members of management being out of the plant from 7:35 PM until approximately 8:10PM on this date 7-6-79. Your scheduled lunch period is 7:00 PM until 7:30 PM.

Absent was any charge of attempted fraud.

Respondent's treatment of shop rule 11 violations by rank-and-file employees differed from the treatment accorded the alleged discriminatees in this case. On five occasions between October 25, 1974, and December 20, 1978, both dates inclusive, Respondent issued five reports of disciplinary action against employee Marshall Williams involving his unauthorized departures from the plant during his working hours. Each time, Respondent charged him with violating shop rule 11. In one instance, he received a disciplinary layoff for the balance of the shift. In the other four instances, his disciplinary layoffs were for the balance of the shift plus 1 or 3 days.

On April 11, General Supervisor Miller and plant security lieutenant Pearson saw second shift, rank-and-file employee Marshall Williams leave the plant at 7 p.m., enter Mel's Chevy Tavern, and remain there for 54 minutes. Miller and Pearson observed Williams leave the tavern and return to the plant where he arrived at 7:58 p.m. On April 16, 17, 18, 21, 22, and 23, while under surveillance by Pearson and Miller, Williams left the plant and took lunch periods of excessive lengths without authorization. On April 30, Williams for the first time, received a report of disciplinary action covering the last six incidents which stated:

You are being issued a disciplinary layoff of the balance of the shift plus two (2) weeks for your aggravated violation of Shop Rule #11. On each of the aforementioned dates you were observed by members of Management leaving the plant, entering and/or exiting the Anchor Inn Bar and thereafter reentering the plant. In each instance, you were out of the plant for an extended period of time and subsequent [sic] rang your time card out at approximately 11:30 PM. This resulted in your time card reflecting that you had been at work for the entire shifts. Your pattern of improper conduct represents a blatant violation of the specified shop rule.

Reports from plant security lieutenant Pearson show that on April 9, 10, 14, 15, 16, 18, 21, and 22, he and members of plant management observed production employee William Cusick taking excessively long lunch periods and returning to the plant. Although Respondent imposed no discipline on Cusick, Labor Relations Supervisor Marsh testified that Cusick should have been disciplined for these violations.

Respondent imposed written reprimands against employees Thomas E. Dunnington and Jack E. Hinerman for their respective violations of shop rule 11 in November 1979. In December 1979, Respondent issued a written reprimand to James J. Burkart for violating shop rule 11, when he absented himself from the plant without authorization for 1 hour and 36 minutes after the expiration of his half hour lunch period. There was no showing that any rank-and-file employee was ever discharged for a violation of shop rule 11, or for attempting to defraud Respondent as part of such a violation.

In September 1979, shop committeeman Gregorek¹² engaged in the practice of leaving the plant during his shift, without authorization, to coach the Union's softball team, returning and punching his timecard out at the end of his shift. Upon learning of this practice, Respondent discharged Gregorek for attempted fraud. Following a grievance proceeding, Gregorek was reinstated. Donald Hadsall, director of personnel services for General Motors Corporation's Chevrolet division, conceded that Hamrick, Miles, and McAdams were the only employees with otherwise clean records, who were ever discharged at Respondent's Parma plant for fraud, after extending a lunch period beyond the authorized limit on one occasion.

C. Analysis and Conclusions

The General Counsel contends first that the record shows that "protected conduct was a 'motivating factor in the Respondent's decision'" (G.C. br., p. 3) to discharge Hamrick, Miles, and McAdams.¹³ The General Counsel also urges that even if the evidence of unlawful motive is insufficient, I should find that Respondent has a "dual standard of discipline" which is "inherently destructive of employee rights" (G.C. br., p. 9),¹⁴ because it discriminates against the Union's committeemen.¹⁵ Therefore, according to the General Counsel, the application of the stricter standard of work rule enforcement against Hamrick, Miles, and McAdams violated Section 8(a)(3) and (1) of the Act. Respondent urges that the General Counsel has not shown that protected activity was "a motivating factor in the decision to discharge Hamrick, Miles, and McAdams. (Resp. br., p. 8)." Respondent also argues that it did not apply a stricter standard to them; but that if I disagree with that contention, enforcement of a high standard against the Union's committeemen was warranted (Resp. br., p. 30). For the reasons stated below, I find that Respondent's conduct did not violate the Act.

In *Wright Line*, the Board held that the General Counsel has the initial burden of making a *prima facie* showing that conduct protected by the Act was "a motivating

¹² In 1978, Respondent found that Gregorek had left the plant without authorization, returned and clocked out at the end of his shift. After discharging him for that conduct, Respondent reinstated him after grievance negotiations with the International Union (UAW), as part of the settlement of Gregorek's grievance, and agreed that it would not condone such conduct in the future.

¹³ See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

¹⁴ See *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33 (1967).

¹⁵ See, e.g., *Owens Corning Fiberglas Co.*, 236 NLRB 479, 480 (1978).

factor" in an employer's decision to discharge or discipline an employee. Once the General Counsel has made the required showing, the burden shifts to the employer to demonstrate that it would have taken the same action even if the employee had not engaged in protected conduct. If the employer does not sustain this burden, its conduct will be found to be violative of the Act. *Id.* at 1089.

Applying the teaching of the Board's decision in *Wright Line*, I find that the General Counsel did not make a *prima facie* showing that the protected activities of Hamrick, Miles, or McAdams were a motivating factor in Respondent's decision to discharge them. The General Counsel does not contend that either Miles' or McAdams' activities as district committeemen played any part in Respondent's decision to discharge them or Hamrick. Instead, it is urged that they were caught in the trap designed to remove Hamrick, who, in his roles as shop committeeman and member of the Union's negotiating team, had provoked Respondent to the point of unlawful discrimination.

The evidence does not show that the hostility manifested by Labor Relations Supervisor Marsh and Assistant Personnel Director Durbin in their remarks to Miles and McAdams to the effect that they suffered discharge only because they were with Hamrick on March 3, arose because of Hamrick's union activity. The record does not show any linkage between the hostile remarks and Hamrick's participation in contract negotiations or his other union activity. For these remarks did not include any reference, express or implied, to either Hamrick's participation in contract negotiations or to his performance as a shop committeeman. Nor was there any other showing that Marsh, Durbin, or any other member of Respondent's management ever threatened reprisals because of Hamrick's union activity, or otherwise showed displeasure because of his union activity. In short, the General Counsel has not shown that Respondent was hostile toward Hamrick because of his protected union activity. The absence of this major element defeated the General Counsel's effort to show that an unlawful motive precipitated the three discharges in this case.

Nor does the record sustain the General Counsel's further position that Respondent's treatment of Hamrick, Miles, and McAdams was inherently destructive of their 8(a)(3)¹⁶ protected right to hold union office, for I find that the evidence does not show that Respondent enforced its plant rules more stringently against them because of their status as the Union's committeemen.

Under well-settled Board law, an employer's discharge of an employee solely because he or she holds a union office, or solely because of his or her performance of the duties of that office, is violative of Section 8(a)(3) and (1) of the Act. E.g., *General Motors Corporation*, 218 NLRB 472, 477 (1975), *enfd.* 535 F.2d 1246 (3d Cir. 1976). Accord: *N.L.R.B. v. The Gates Rubber Co.*, 493 F.2d 249, 250 (6th Cir. 1974). The Board has recognized that

such discrimination would effectively discourage other employees from seeking or holding union office. *General Motors, supra*, at 477. However, the holding of union office does not protect an employee from discharge for violation of shop rules, where the employer "has acted purely in disinterested defense of shop discipline. . . ." *American Ship Building Co. v. N.L.R.B.*, 380 U.S. 300, 311 (1965). See also *Midwest Precision Casting Company*, 244 NLRB 597, 599 (1979).

Here, Respondent discharged committeemen Hamrick, Miles, and McAdams because they punched their respective timecards out at the end of their respective work periods on March 3, and thus, claimed entitlement to wages for their unauthorized absences. Their companion, district committeeman Wiechec escaped punishment because he did not return to the plant and punch his timecard out.

The imposition of the discharges was substantially harsher punishment than Respondent had inflicted on employees guilty of similar misconduct, prior to or since March 3. However, Respondent imposed the discharges after substantiating its suspicion that Hamrick had been abusing his privileged status in like fashion. Finding that Miles and McAdams engaged in similar misconduct in Hamrick's company, Respondent felt obliged to punish them with the same rigor they applied to Hamrick. Respondent's sentiment in this regard was reflected in Marsh's and Durbin's subsequent remarks to Miles and McAdams explaining that they had suffered such harsh punishment because they were caught with Hamrick.

Respondent reasonably expected Hamrick and the other committeemen to be available during their shifts to assist in resolving labor relations problems on the production floor. To achieve its purpose, Respondent granted Hamrick and his colleagues a special status. Respondent relieved them of their usual production or maintenance tasks, but paid them their usual wages for solving grievances and helping to maintain the industrial peace at the Parma plant. Further, Respondent granted the shop and district committeemen freedom of movement denied to the rank-and-file employees. This privilege was in furtherance of Respondent's attempt to enable the committee to accomplish their labor relations tasks.

In 1978, Respondent saw the possibility that committeemen would abuse their status. In September of that year, Respondent discovered that shop committeeman Gregorek had abused his privileges by absenting himself during his shift, without authorization, returning, and then clocking out at the end of his shift, Respondent discharged him for attempted fraud. In the negotiations leading to Gregorek's reinstatement, Respondent obtained the UAW's agreement not to condone such conduct. Later, when confronted with the possibility that shop committeeman Hamrick was also abusing his privileges, Respondent quickly investigated and found him doing so on March 3, 1980.

In light of the union committeemen's special status, which made it relatively difficult for management to locate them, Respondent could lawfully treat their unauthorized absences and their failure to record such absences on their timecards as more serious offenses than

¹⁶ Sec. 8(a)(3) of the Act provides, in relevant part, that it is an unfair labor practice for an employer:

[the] discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . .

similar misconduct by rank-and-file employees. I find, therefore, that Respondent discharged Hamrick, Miles, and McAdams in the interest of shop discipline, and did not thereby violate Section 8(a)(1) and (3) of the Act.¹⁷

¹⁷ Contrary to the General Counsel, I find that the Board's decision in *General Motors Corporation, Delco Air Conditioning Division*, 244 NLRB 729 (1979), does not provide governing precedent here. In that case, the Board found that the employer resorted to a pretext when it discharged Robert Mullins, a union shop committeeman, and that the real reason was "to put a stop to his union activities. . . ." *Id.* at 732. In reaching these findings, the Board looked to the disparity between the discharge imposed upon Mullins and the discipline imposed upon other employees for the same misconduct, evidence of management hostility toward Mullins' activity as a shop committeeman, including a threat of discharge, management's attempt to condition his reinstatement, first upon his causing another shop committeeman to withdraw two pending grievances, second, upon the union's agreement to a change in the method of selecting employees for overtime, and, finally, upon Mullins' resignation as committeeman. Mullins rejected each of the conditions and remained dis-

Accordingly, I shall dismiss the complaint in its entirety.

Pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁸

It is ordered that the complaint herein be, and it hereby is, dismissed in its entirety.

charged. As the facts in the instant case do not show the presence of an unlawful motive, I find it to be clearly distinguishable from *General Motors Corporation, Delco Air Conditioning Division, supra*.

¹⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.